Supreme Court, U.S.
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In The

Supreme Court of the United States

IRENE ROMANIUK,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

MARC WILLIAM MARTIN
Counsel of Record
MARC MARTIN, LTD.
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 408-1111

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

1. Was the petitioner "seized" without probable cause within the meaning of the Fourth Amendment where the undisputed evidence showed that police officers lacked probable cause to arrest the petitioner, but nonetheless confronted her in a parking lot, refused to allow her to make a telephone call even though there were mobile telephones available, took her purse from her and placed it in the trunk of a police vehicle, did not inform her that she was free to leave and transported her in the back of a police car to a non-public interview room in a police station for interrogation even though her own car was parked less than a block away?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Irene Romaniuk prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, First District, affirming her conviction and sentence for first degree murder.

OPINIONS BELOW

The Illinois Appellate Court's order affirming the petitioner's conviction is unpublished and is attached hereto in Appendix A. The Illinois Supreme Court's order denying the petitioner's petition for leave to appeal is unpublished and is attached hereto in Appendix B.

JURISDICTION

The Illinois Appellate Court, First District, affirmed the petitioner's conviction and sentence on July 23, 2004. Petitioner filed a timely petition for leave to appeal in the Illinois Supreme Court, which was denied on November 24, 2004. This petition is timely in that it has been filed within 90 days of the Illinois Supreme Court's order denying leave to appeal. Jurisdiction is conferred by 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution states in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property without due process of law.

STATEMENT OF THE CASE

1. An indictment charged Petitioner Irene Romaniuk with first degree murder under Illinois law. Prior to trial, the petitioner moved to quash her arrest and suppress evidence. C. 76, 98; Tr. 271-72. Evidentiary hearings were held on the suppression issues.

On the morning of September 28, 2000, Kristen Popelka was found stabbed to death in an apartment where she had resided. Petitioner, a girlfriend of Popelka's live-in boyfriend, became a suspect in the offense.

Around 1:30 p.m. on September 29, 2000, two police officers, Joseph Micci and Joseph Berk, initiated surveillance around an apartment complex where the petitioner lived. II Supp.R. 163-65. Around 3:20 p.m., Micci saw the petitioner and her mother emerge from a gangway. II Supp.R. 167-68. Micci and Berk exited their squad car, approached the two women, announced their identities and asked to speak to them. II Supp.R. 169. Micci requested identification. II Supp.R. 169. The petitioner

produced a driver's license, which Micci examined and returned. II Supp.R. 169.

Micci informed the petitioner that police detectives wanted to talk to her for an unknown reason. II Supp.R. 169-70. The officers did not inform the petitioner that she was free to leave or could go to the police station later. II Supp.R. 185, 190-91, 195, 213. The option of the petitioner driving to the police station in her own vehicle also was not discussed. II Supp.R. 185.

Petitioner asked Micci if she could call her father. II Supp.R. 170, 185. Micci, who possessed a mobile phone, responded that he had no means to permit a phone call. II Supp.R. 53, 170, 187, 189, 208-210. Petitioner had a mobile telephone in her purse, but did not then place any phone calls. II Supp.R. 180-81, 186.

Micci called for a transport car. II Supp.R. 173, 187. Petitioner's mother asked if she could accompany her daughter to the police station. II Supp.R. 170, 201. Micci agreed. II Supp.R. 170, 201.

A total of four more officers arrived on the scene. II Supp.R. 87, 169, 173-74, 192. Officer Michael Brady asked if he could look in the petitioner's purse. II Supp.R. 202. Petitioner did not protest according to Brady. II Supp.R. 202. Brady pulled out $100 bills. II Supp.R. 202-03. Petitioner explained that the money was for her divorce. Tr. 357. No weapons were found in the purse. II Supp.R. 214; Tr. 371, 374-75.

Micci instructed the officers to place the petitioner's purse in the trunk of the transport car. II Supp.R. 178, 183, 192-93, 203, 212, 215. In the petitioner's presence, Brady did so. Micci explained that this was "standard

operating procedure" to ensure safekeeping of the money and officer safety. II Supp.R. 183, 193-94. No officer articulated any particular safety concerns with respect to the petitioner or the purse. II Supp.R. 213-14; Tr. 372-73.

An officer found the petitioner's vehicle parked on a street nearby. II Supp.R. 200. A title search disclosed that the petitioner was a registered owner of the vehicle. Tr. 308. The license plate on the vehicle did not correspond to the vehicle and registered to the petitioner's then husband. Tr. 287, 301. Absent asking the petitioner for permission or seeking a warrant, Micci caused the vehicle to be towed to the police station. I Supp.R. 53; II Supp.R. 189-90, 175, 184; Tr. 285-86.

While in the parking lot, officers asked the petitioner and her mother if they had anything in their pockets, and instructed them to empty their pockets. Tr. 370. An officer checked the petitioner's coat pockets. Tr. 370.

Petitioner and her mother entered the rear of the police car and were transported to the police department. II Supp.R. 177, 188-89. Petitioner was not handcuffed. II Supp.R. 204. An officer brought the petitioner to a non-public police department interview room. Tr. 358. An officer purse placed the petitioner's purse on the floor adjacent to the interview room. Tr. 377-78. The purse was later locked in an office and its contents inventoried. Tr. 379.

Two detectives began questioning the petitioner, then not handcuffed, in a non-public police department interview room around 5:00 p.m. I Supp.R. 41. Detective Nicholas Pecora noticed that the petitioner did not deviate from a position of tightly-clenching a thermos cup and keeping her right hand under her thigh. I Supp.R. 41-42,

44. Pecora informed the petitioner that they were looking into an "incident" that had occurred a day earlier. I Supp.R. 42. Petitioner explained her whereabouts in a non-incriminating manner, but volunteered, "I don't know what you want me to say. I didn't hurt anybody." I Supp.R. 43-44. Petitioner requested and was brought food. I Supp.R. 45. After *Miranda* rights were recited, the petitioner refused to sign a waiver form, but said to "keep going." I Supp.R. 45, 91-92.

Petitioner was asked to display her fingertips. I Supp.R. 45-46. Petitioner exhibited reluctance and was "almost argumentative." I Supp.R. 45-46. Petitioner had bandages on two fingers of her right hand; red, oozing nail-beds protruded from under the bandages. I Supp.R. 46. Two cosmetic fingertips on the petitioner's left hand were missing. I Supp.R. 46. The finish on the petitioner's fingernails was similar to a fingernail recovered at the crime scene. I Supp.R. 47.

Up to this point, Pecora did not believe that the petitioner was under arrest. I Supp.R. 48. Pecora asked the petitioner what had happened to her fingernails. I Supp.R. 48. Petitioner explained that she had experienced a garbage disposal mishap about a week earlier. I Supp.R. 48. Pecora confronted the petitioner with disbelief. I Supp.R. 49. At that point, Pecora formed the opinion that there was probable cause and that the petitioner was under arrest. I Supp.R. 49, 89.

Petitioner's then-husband co-owned the towed vehicle. Sometime after the evening of September 29, 2000, he provided the officers with consent to search the vehicle. Tr. 315-18, 322. On October 1, 2000, a judge signed a search warrant, authorizing search of the vehicle. Tr. 321.

On the foregoing facts, the trial judge ruled that the police possessed enough information for a *Terry* stop upon initially encountering the petitioner. Tr. 87. The court believed that the petitioner had voluntarily accompanied police to the police station and was not in custody or under arrest. Tr. 86-88. Later, the judge stated that, while she did not think that the petitioner was under arrest in the parking lot, the police had enough information to take her to the police station and interrogate her. Tr. 88. The court ruled that probable cause arose around 5:30-5:40 p.m. on September 29, 2000, *i.e.*, following the recital of *Miranda* warnings at the police station. Tr. 87-88.

Concerning the purse, the circuit court stated that it was voluntarily given to the police. Tr. 400. The court accepted police testimony that the purse was placed in the trunk of the squad car for officer protection and to protect the money (approximately $8,000). Tr. 400.

With respect to the vehicle, the circuit court determined that the tow constituted a "seizure," but ruled that the police could "protect" the vehicle. Tr. 395-98. At another point in the findings, the court said that the wrong plates on the vehicle allowed for the vehicle's seizure. Tr. 397.

2. Petitioner underwent a jury trial. At trial, the State admitted testimony and evidence, including evidence of the petitioner's oral statements, deriving from her encounter with police as described above. The State also admitted evidence recovered from the petitioner's vehicle and purse.

Evidence adduced at trial is described in the Illinois Appellate Court's order. App. A. The jury found the petitioner

guilty of first degree murder. The circuit court imposed a 45-year prison term. C. 342; Tr. 1537-38.

3. Petitioner appealed to the Illinois Appellate Court and raised search and seizure issues as described herein. The appellate court affirmed. App. A. The appellate court deferred to the trial court, and found that the petitioner had voluntarily accompanied the police officers to the police station and had voluntarily surrendered her purse to the officers. App. A-10-12. With respect to the vehicle tow, the appellate court, absent citation to authority, did not address its legality on grounds that the admission of the evidence recovered from the vehicle constituted harmless error in light of defense counsel's trial admission that the petitioner had killed Popelka. App. A-11.

REASONS FOR GRANTING THE WRIT

I. PETITIONER WAS "SEIZED" WITHOUT PROBABLE CAUSE WITHIN THE MEANING OF THE FOURTH AMENDMENT WHERE THE UNDISPUTED FACTS SHOWED THAT POLICE OFFICERS DID NOT HONOR THE PETITIONER'S REQUEST TO MAKE A TELEPHONE CALL, TOOK HER PURSE AND PLACED IT IN THE TRUNK OF A POLICE VEHICLE, TOWED THE PETITIONER'S VEHICLE WITHOUT A WARRANT OR CONSENT AND TRANSPORTED THE PETITIONER TO A POLICE STATION ABSENT TELLING HER SHE WAS FREE TO LEAVE

At the outset, we note that the procedural posture of this case does not impose an impediment to exercise of certiorari jurisdiction. The question of whether an encounter constituted a "seizure" is a mixed question of law and

fact. *E.g., United States v. Cormier,* 220 F.3d 1103, 1110 (9th Cir. 2000). While the factual findings of a trial court are entitled to deference, its legal conclusions are not. Here, the question of whether the petitioner was "seized" constitutes a legal conclusion which flows from the facts. Because the pertinent facts here are not in dispute, the question of whether a "seizure" occurred is subject to *de novo* review, and the Illinois Appellate Court inappropriately deferred to the trial court's legal conclusions on the search and seizure issues. *Cf. Ornelas v. United States*, 517 U.S. 690 (1996).

The appellate court determined that police officers did not "seize" the petitioner when they encountered her in the parking lot. App. A-10-11. In *Kaupp v. Texas*, 538 U.S. 626 (2003) (*per curiam*), this Honorable Court articulated the standard for determining whether a "seizure" occurred:

> A seizure of the person within the meaning of the Fourth and Fourteenth Amendments occurs, when taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.

Id. at 632 (quotations omitted); *see also Terry v. Ohio*, 392 U.S. 1, 16 (1968) (a seizure occurs "whenever a police officer accosts an individual and restrains his freedom to walk away"). This test is objective. *E.g., Michigan v. Chesternut*, 486 U.S. 567, 574 (1988).

This Honorable Court has recognized that the detention of property is a factor in determining whether a "seizure" occurred. In *Florida v. Royer*, 460 U.S. 491, 493 (1983) (plurality), two plainclothes detectives observed the

defendant at Miami International Airport and determined he fit a drug courier profile. The two detectives approached Royer and asked if they could speak to him. *Id.* at 494. Royer responded "Yes." *Id.* Upon request, Royer produced his airline ticket and driver's license. *Id.* After noting a discrepancy in the name on the driver's license and the airline ticket, the detectives informed Royer that they were narcotics investigators and that they suspected him of transporting narcotics. *Royer*, 460 U.S. at 494. The detectives did not return the airline ticket and identification, but asked Royer to accompany them to a small room. *Id.* The detectives also retrieved the two suitcases from the airline without Royer's consent and brought them to the small room. *Id.* When asked for consent to search the suitcases, Royer, without orally responding, produced a key and unlocked one of the suitcases. *Id.* Drugs were recovered from the suitcase. *Id.* Royer did not know the combination to the lock on the second suitcase, but did not object when the officer pried it open. *Id.* at 494-495. Drugs were also recovered from the second suitcase. *Id.* at 495.

This Honorable Court held that Royer was illegally detained at the time he purportedly consented to a search of his luggage. *Id.* at 507-508. Several factors that led this Honorable Court to conclude that the respondent's confinement was tantamount to arrest:

> Asking for and examining Royer's ticket and his driver's license were no doubt permissible in themselves, but when the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicating in any way that he was free to

> depart, Royer was effectively seized for the purposes of the Fourth Amendment.

Id. at 460 U.S. at 501; *see also United States v. Boris*, 766 F.2d 304, 310 (7th Cir. 1985) ("officers' retaining airline tickets and driver's license has been a crucial factor in finding that a seizure has occurred. Suspects deprived of their identification and ticket are effectively deprived of the practical ability to terminate the questioning and leave").[1]

The appellate court's holding in this case deviates from the principles announced in the foregoing cases. The totality of the circumstances confronting the petitioner certainly were coercive, and any acquiescence by the petitioner was nothing more than a submission to the police officers' "'claim of lawful authority.'" *Kaupp*, 538 U.S. at 631 (quoting *Royer*, 460 U.S. at 497). After all, a total of six police officers arrived at the parking lot. Petitioner had no prior experience with the criminal justice system. She asked if she could telephone her father, but Sergeant Micci admittedly refused that request. II Supp.R. 53, 170, 187, 189, 208-210. Officer Brady took possession of the petitioner's purse. Petitioner did not sign a consent-to-search form relating to the purse, or give affirmative

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[1] *Royer* distinguished *United States v. Mendenhall*, 446 U.S. 544 (1980). "In *Mendenhall*, no luggage was involved, the ticket and identification were immediately returned and the officers were careful to advise that the suspect could decline to be searched." *Royer*, 460 U.S. at 503. In *Royer*, the ticket, identification and luggage remained in the possession of the officers and, "as a practical matter, Royer could not leave the airport without them." *Id.* The officers may have obviated any claim that the encounter was anything but consensual by returning Royer's ticket and driver's license and informing him he was free to go if he so desired. *Id.* at 504.

consent after being advised of her rights. Rather, Brady merely testified that the petitioner did not protest when he asked to look in the purse. II Supp.R. 202. Petitioner was not given the option of retaining her purse, nor was she ever informed that she was free to leave. Acting on Micci's instructions, Brady, in the petitioner's presence, placed the purse in a police vehicle trunk. As in *Royer*, the petitioner obviously was not free to leave once she had been dispossessed of her personal belongings. The officers also did not point to any specific objective facts that the petitioner posed a threat to their safety if allowed to retain her purse. That the placement of property in a police vehicle trunk followed "standard procedure" does not detract for the objective coerciveness of the situation from the petitioner's perspective. *See Kaupp*, 538 U.S. at 632.[2] In addition, police did not permit the petitioner to drive to the police station on her own accord, even though her vehicle was parked nearby. Acting without a warrant or consent, police caused the petitioner's vehicle to be towed, and transported her in the back of a police vehicle to a police station interview room for purposes of interrogation. Under these circumstances, a reasonable person simply would not have believed that she was free to go about her business unhindered by the police officers. In short, the petitioner was "seized" within the meaning of the Fourth Amendment.

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[2] In *Kaupp*, three police officers, acting without a warrant, roused an adolescent out of bed in the middle of the night, told him "we need to talk," and led him in handcuffs and wearing only boxer shorts and a t-shirt to a police car for transport to the station. *Id.* at 628. This Honorable Court found a Fourth Amendment violation even though the handcuffs were used for "safety" purposes and Kaupp did not resist. *Id.* at 632. This was because a reasonable person in Kaupp's situation would not have believed he was free to leave. *Id.*

The State bears the burden of establishing objective justification (*i.e.*, probable cause) for the warrantless "seizure." *See, e.g., Katz v. United States*, 389 U.S. 347, 356 (1967) (plurality). On appeal, the State took the position that the petitioner had voluntarily accompanied the officers and that a "seizure" had not occurred. *See* State's Ill. App. Ct. Brief. The State did not assert that probable cause had supported a "seizure." Moreover, the trial court ruled that police did not have probable cause when they encountered the petitioner. Tr. 86-87. The appellate court did not disturb that ruling.

As the facts demonstrate that the petitioner was "seized" absent probable cause or a warrant, the Fourth Amendment was violated. *See Hayes v. Florida*, 470 U.S. 811 (1985); *Dunaway v. New York*, 442 U.S. 200 (1979); *Brown v. Illinois*, 422 U.S. 590 (1975); *Davis v. Mississippi*, 394 U.S. 721 (1969). The officers also illegally "seized" the petitioner's purse and vehicle in that they lacked probable cause, a warrant or voluntary consent. Petitioner's suppression motions thus should have been granted. The Illinois Appellate Court misapplied this Honorable Court's Fourth Amendment jurisprudence in affirming the trial court's suppression rulings. Grant of certiorari is warranted.

CONCLUSION

WHEREFORE, Petitioner Irene Romaniuk respectfully prays that this Honorable Court grant this petition and issue a writ of certiorari to vacate or review the judgment of the Illinois Appellate Court, remand for

further consideration and/or grant any other appropriate relief.

Respectfully submitted,

MARC WILLIAM MARTIN
Counsel of Record
MARC MARTIN, LTD.
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 408-1111

APPENDIX A

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the discontinuation of the same.

FIFTH DIVISION
July 23, 2004

No. 1-03-0545

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. IRENE ROMANIUK, Defendant-Appellant.	) Appeal from the) Circuit Court of) Cook County.) No. 00 CR 25338) Honorable) Thomas Fecarotta,) Judge Presiding.

ORDER

Defendant, Irene Romaniuk, appeals her jury conviction for first-degree murder and her sentence of 45-years' imprisonment. Upon appeal, defendant contends that: (1) the trial court erroneously denied her motions to quash arrest and suppress evidence, including evidence recovered from her parked automobile and evidence recovered from her purse; and (2) the trial court erred when it

refused to allow defendant to ask potential jurors supplemental voir dire questions. We affirm.

At the hearings upon defendant's motions to quash arrest and suppress evidence, Investigator Nicholas Pecora testified that on September 28, 2000, he responded to a 911 call by Stephen Hudson. When Pecora arrived at Hudson's apartment in the Tanglewood complex in Arlington Heights, he saw the victim, Kristen Popelka, lying on her back in the kitchen. Pecora testified that evidence technicians found shoe prints containing a chevron pattern in the blood on the kitchen's tile floor, and a cosmetic fingernail containing blood. When Pecora asked Hudson who would want to harm the victim, Hudson responded that defendant, with whom he had recently broken off a relationship, was the only person. Hudson provided Pecora with defendant's photograph and told him that defendant drove a white, two-door Lexus.

Illinois State Police Sergeant Joseph Micci testified that he worked with the major case assistance team (MCAT) and was investigating the victim's murder. On September 28, 2000, Micci and another officer maintained surveillance of defendant's apartment building in Chicago. Micci parked across from defendant's assigned parking space, looking for a white Lexus. At approximately 3:20 p.m., Micci observed defendant and another woman, later identified as Carolyn Romaniuk, defendant's mother, walk from the gangway between two apartment buildings. Micci recognized defendant from the photographs provided to him. As the two women approached, Micci and his partner identified themselves and asked the women if they could speak with them. Micci then asked both women for identification, and as defendant removed her license from her

wallet, Micci noticed a medium size amount of cash, later determined to be $8,000, inside the wallet.

Micci returned defendant's license and stated that Arlington Heights police wanted to speak with her. When defendant asked why they wanted to speak to her, Micci responded that he did not know because his job was to maintain surveillance and to determine whether defendant would be willing to accompany him to the police station. Neither Micci nor his partner revealed to defendant they were investigating a homicide. When defendant asked if she could call her father, Micci told her that he did not have a phone with him. He did not realize that defendant had a cell phone in her purse. Micci agreed to defendant's request that her mother accompany her to the police station.

Micci then asked defendant why she did not park in her parking space and defendant replied that parking was tight when she arrived home and the only spot to park was on Rascher Street, a street one block north that was accessible through the gangway. When two other officers arrived, Micci walked to where defendant parked her car, which was not visible from where defendant and her mother were standing. Micci testified that he never opened the car or trunk, and that he instructed the other officers not to touch the car.

Micci testified that neither he nor any other officer told defendant that she had to go to the police department, and defendant and her mother entered the unmarked, uncaged car without assistance. The doors remained unlocked. Micci told the transporting officers to place the purses of defendant and her mother into the trunk because of the money contained in defendant's wallet. Defendant

kept the keys to her car. Neither defendant nor her mother requested an attorney. When Micci checked the license plate on defendant's Lexus, he discovered the plate was registered to another vehicle, to defendant's husband.

Investigator Sales testified that he was working with the MCAT team on September 29, 2000. He and Investigator Brady arrived at defendant's apartment building that day where they met with Micci and his partner, who were speaking with two females. Sales heard Micci ask defendant if she would accompany them to the police department and heard defendant's mother ask if she could go with defendant. Sales testified that no one grabbed defendant or her mother, or otherwise forced the women into the police car. Micci then gave Brady permission to look through defendant's purse, and Brady discovered the one hundred dollar bills. Defendant's purse and her mother's purse were placed in the trunk of the police car during transport to the police station. Sales stated that neither defendant nor her mother said they did not want to accompany the officers, and at no time were the women handcuffed. No one in his presence conducted a patdown of the women.

Sergeant Brady testified that he transported defendant and her mother to the police station on September 29, 2000. He stated that before transport, he asked defendant if he could search her purse for safety purposes, and defendant consented. When he looked in the purse, Brady noticed a large amount of cash and asked why she had that amount of money. Defendant responded that the money was for her divorce. After finding no weapons, Brady placed defendant's purse in the trunk of his car.

Defendant testified at the hearing that on September 29, 2000, she and her mother were walking through the parking lot of defendant's apartment building when two officers approached them. They asked defendant if she was Irene Romaniuk and then asked for her identification, which they took from her. When defendant asked the officers what they wanted, they responded that they were investigating a homicide. The officers then told them to walk to the police car and the officers searched both of their purses. Defendant then stated that the officers patted her stomach and searched the pouch she was wearing, as well as her wallet inside the pouch. Defendant asked the officers if she could call her father or her divorce attorney on the cell phone they found in her purse, but they refused permission. Another officer grabbed her right hand and forced her into the car.

Mrs. Romaniuk, defendant's mother, also testified at the hearing. She testified that one of the officers took defendant's car keys and announced that he was going to search defendant's car. She observed the officer open the trunk of the car, search the trunk and then enter the car on the driver's side. Mrs. Romaniuk stated that when two other officers arrived, they patted down defendant and searched the pouch she wore under her sweatshirt. The police then placed the purses and the pouch into the police car trunk. Mrs. Romaniuk testified that one of the officers grabbed defendant by the arm and told her that she was coming with them, and then told Mrs. Romaniuk that she could accompany them. When they arrived at the police station, she and defendant were placed in separate rooms. Mrs. Romaniuk stated that she saw one bandaid on defendant's finger, and she did not recall seeing it on her finger the day before.

After the hearings, the trial court denied defendant's motions to quash arrest and suppress evidence obtained from her purse and her Lexus.

At trial, Hudson testified that on September 28, 2000, he lived in the Tanglewood apartment complex with the victim, Kristen Popelka. In May or June, 2000, however, Hudson had also developed a relationship with defendant. In August, 2000, while he and defendant were having lunch at a restaurant, Hudson encountered defendant's husband, Tom Truduj. Hudson had not known that defendant was married. After the encounter, Hudson attempted to break off his relationship with defendant, but defendant called him on his cell phone all day and told him, "Nothing is going to get between us. If she gets between us, I'll gut that bitch." Hudson testified that when he retuned to the apartment at approximately 10 a.m. on September 28, 2000, he found the victim lying on the kitchen floor, covered in blood with something over her face.

Angel Salinas, a neighbor of the victim, testified that at approximately 7:30 to 7:40 a.m. on September 28, 2000, he heard the entrance door open. When he opened the door of his apartment, he saw a blond female who was dressed in blue jogging clothes and a cap walk by the apartment. A couple of minutes later, Salinas heard screams coming from the victim's apartment. When he went to the door of the victim's apartment, he heard a female voice saying, "How much money do you want?" in a low, dying voice.

Christina Sobczyk testified that she and defendant have been friends for six months. During the second week of September, 2000, Sobczyk was a passenger in defendant's car when defendant drove to the victim's apartment complex to confront the victim about her relationship with

Hudson. Sobczyk described defendant's car as a white Lexus. Sobczyk also stated that defendant had once asked her whether she knew of anyone who could help defendant "take care of somebody." On the evening of September 27, 2000, Sobczyk was with defendant and at the time defendant's fingernails had a "french tip" and were in perfect condition.

Investigator Pecora testified at trial that he interviewed defendant at the police station on September 29, 2000. Pecora told defendant only that he was investigating an incident that occurred the day before, and that her name arose as someone who may have some information. After defendant summarized her activities on the previous day, she told Pecora, "I don't know what you want me to say, I didn't hurt anybody." Pecora had not told defendant anybody was hurt. Pecora also noticed that defendant sat with her right hand under her right thigh. After Pecora advised defendant of her *Miranda* rights, defendant stated that she was tired but agreed to speak with him.

Pecora asked defendant to show him her right hand, and defendant became reluctant. When defendant displayed her fingers, Pecora noticed that the right ring finger and middle finger had bandaids around the nail area, and that blood was oozing from under the bandaid. Pecora also observed the pinky and ring fingers of defendant's left hand had cosmetic nail applications that appeared to have been torn off. The other fingers on defendant's hands had a French manicure on the nails. When Pecora asked defendant what had happened to her fingernails, Pecora responded that she was injured in a "garbage disposal mishap." Pecora told defendant that a cosmetic fingernail that appeared to match defendant's french manicured nails was found at the crime scene, and

defendant stated she and Hudson frequently wrestled in the apartment and she lost many fingernails as a result. Pecora gave defendant her *Miranda* rights and she was placed under arrest.

Micci and Brady also testified at trial, and their testimony was substantially the same as the testimony they gave at the hearings on defendant's motions to quash arrest and suppress evidence.

A cosmetic fingernail recovered from the scene, as well as a kitchen tile and front door knob tested positive for blood. A piece of tissue paper found in defendant's Lexus also tested positive for blood. DNA testing performed upon the evidence revealed the DNA on the tissue paper matched the victim's DNA profile. The DNA on the exterior of the cosmetic fingernail matched the victim's profile, and the interior of the fingernail contained a DNA mixture consistent with the profiles of the victim and defendant. The door knob contained a DNA mixture consistent with defendant's profile.

Dr. Joseph Cogan performed the autopsy upon the victim which revealed that she suffered 45 injuries to her head and neck consistent with having been made by the claw of a hammer. The victim's teeth were chipped, and she had other penetrating wounds similar to stab wounds on her body. Dr. Cogan stated the victim died as a result of multiple injuries and the manner of death was homicide.

Dr. Alexander Obolsky, a privately retained psychiatrist, testified for the defense. Dr. Obolsky concluded that defendant suffered from depressive, personality, anxiety and chronic pain disorders. Although Dr. Obolsky concluded defendant was not insane on September 28, 2000, she did have an unreasonable belief of self-defense and

experienced sudden and intense passion as a result of the victim's provocation.

In rebuttal, the State called Susan Messina, a clinical psychologist employed by Cook County forensic clinical services. After interviewing defendant and reviewing papers, Messina concluded that defendant suffered from an adjustment disorder with mood anxiety and depressed mood. Messina found no evidence of abuse. She also opined that defendant was not acting in self-defense at the time of the incident and defendant gave no indication she felt her life was in danger or she feared for her safety. Defendant did not suffer any injuries from the victim.

The jury found defendant guilty of first-degree murder and the trial court sentenced defendant to 45-years' imprisonment. Defendant filed this timely appeal.

Defendant argues the trial court erred when it denied her motions to quash arrest and suppress evidence obtained from her purse and her Lexus. Reviewing courts give great deference to a trial court's factual and credibility determinations regarding motions to suppress, and will reverse the trial court on these matters only if its findings are manifestly erroneously [sic]. *People v. Love,* 199 Ill. 2d 269, 274 (2002). However, reviewing courts apply the *de novo* standard of review to the ultimate question of whether the trial court erred in denying defendant's motion to suppress. *People v. Calderon,* 336 Ill. App. 3d 182, 191 (2002).

First, defendant contends the trial court erred when it denied her motion to quash her arrest. An arrest made without a warrant or probable cause violates a person's fourth amendment right to be free from unlawful searches and seizures. *People v. Melock,* 149 Ill. 2d 423, 436 (1992). A person is "'seized' within the meaning of the Fourth

Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *People v. Bolden,* 197 Ill. 2d 166, 180-81 (2001), quoting *United States v. Mendenhall,* 446 U.S. 544, 553-54, 64 L. Ed. 2d 497, 509, 100 S. Ct. 1870, 1877 (1980). Some factors to consider in determining whether one has been seized are the presence of multiple officers, display of weapons, touching by officers, use of language suggesting the person is compelled to obey, and occurrences of practices normally associated with being arrested such as searching, handcuffing and fingerprinting. *Bolden,* 197 Ill. 2d at 181.

Defendant contends she was seized without probable cause when police officers approached her and her mother in the parking lot of her apartment complex. In ruling upon defendant's motion, the trial court found the testimony of the police officers credible, and this finding is not manifestly erroneous. The officers testified that they asked defendant if she would accompany them to the station, to which she agreed, and then she asked if her mother could go with her and the officers honored defendant's request. Although defendant asked to call her father, she did not ask to use her own cell phone. Defendant was placed in the back of a detective car, which had no cage and was not locked. No force was used to get defendant or her mother into the car, and defendant was not patted down or handcuffed prior to her transport to the station. Officers placed defendant's purse in the trunk of the police car for safety and safekeeping purposes. Considering the totality of the circumstances, defendant was not seized without probable cause when she first encountered the officers in the parking lot, but rather, voluntarily accompanied the officers to the station. See *People v. Ollie,* 333 Ill. App. 3d

971, 982 (2002) (the court found that despite the fact that officers patted down the defendant before transport and did not ask defendant if he wished to provide his own transportation to the station, given the totality of the circumstances the defendant was not under arrest when he first accompanied officers to the station).

Next, defendant contends the police improperly seized her Lexus, and the trial court therefore erred in denying her motion to suppress evidence obtained therefrom. We need not address whether the police improperly seized the Lexus, as the only evidence recovered from there and introduced at trial was a piece of tissue paper that contained a blood stain consistent with the victim. Clearly, the bloody tissue paper found in the defendant's Lexus was evidence tending to show defendant killed the victim. However, error, if any, in denying the motion to suppress and admitting the bloody tissue paper was harmless, where the identity of the victim's murderer was not at issue; defense counsel conceded at trial that defendant killed the victim.

Defendant also contends police improperly seized her purse, and the trial court erred in denying her motion to suppress the $8000 in cash recovered therefrom. Officer Brady testified that defendant gave him permission to search her purse, at which time he discovered the cash inside. Officer Brady testified he then placed the purse in the trunk of his squad car for safekeeping purposes. Officer Brady testified he "made sure" that defendant saw him put the purse in the trunk and that he told her they would take the purse out once they got to the police station. Officer Pecora testified that at the police station, the purse was placed on the floor adjacent to the room in which defendant was interviewed.

The trial court found Officer Brady's and Officer Pecora's testimony to be credible, and determined that no seizure occurred as defendant voluntarily gave the officers her purse. The trial court's finding is not manifestly erroneous.

Next, defendant argues the trial court erred by refusing to ask certain *voir dire* questions relating to the jurors' expectations as to whether defendant should testify, the dating habits of the victim and defendant, abortion, personality disorder, and abusive relationships.

Supreme Court Rule 431 governs *voir dire* in criminal cases and provides:

> "(a) The court shall conduct *voir dire* examination of prospective jurors by putting to them questions it thinks appropriate, touching upon their qualifications to serve as jurors in the case at trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature of the charges. Questions shall not directly or indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with the general duties and responsibilities of jurors.
>
> (b) If requested by the defendant, the court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles:
>
> (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a

> defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." 177 Ill.2d R. 431. The committee comments to this rule provide:
>
> "The new language is intended to ensure compliance with the requirements *of People v. Zehr,* 103 Ill.2d 472 (1984). It seeks to end the practice where the judge makes a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law." 177 Ill.2d R. 431, Committee Comments.

In *Zehr,* the defendant was charged with home invasion, burglary and aggravated battery. During jury selection, the defendant tendered the following three supplemental questions:

> "'1. If at the close of all evidence and after you have heard arguments of counsel you believe that the State has failed to sustain the burden of proof and has failed to prove the defendant guilty beyond a reasonable doubt, would you have any hesitation whatsoever in returning a verdict of Not Guilty?
>
> 2. If the defendant, Mr. Zehr, decides not to testify in his own behalf would you hold it against him?
>
> 3. Do you understand that the defendant is presumed innocent and does not have to offer any evidence in his

own behalf but must be proven guilty beyond a reasonable doubt by the Sate?' " *Zehr*, 103 Ill.2d at 476.

The circuit court refused to include defendant's supplemental questions in its *voir dire* examination of the jury. On appeal, the Illinois Supreme Court held that "although they need not have been asked in precisely the form submitted, the subject matter of the questions should have been covered in the course of interrogation on *voir dire*." *Zehr*, 103 Ill. 2d at 477.

Here, the circuit court informed prospective jurors as a group about defendant's presumption of innocence, the State's burden of proof and that defendant does not have to present evidence or testify on her own behalf, and permitted defendant to question prospective jurors individually. This is all that Supreme Court Rule 431 requires. The circuit court's refusal to allow defense counsel to ask the precise supplemental questions defendant desired, which were redundant or tended to highlight aspects of defendant's case rather than bias, was not error. See *People v. Chamness,* 129 Ill. App. 3d 871, 874 (1984) (trial court did not err by refusing to ask questions that highlighted aspects of defendant's case rather than bias); *People v. Kraus,* 318 Ill. App. 3d 774, 783 (2000) (trial court did not err by refusing to ask redundant questions.) Accordingly, defendant's contention of error is without merit.

For the foregoing reasons, we affirm the circuit court.

Affirmed.

O'BRIEN, J., with CAMPBELL, P.J., and NEVILLE, J., concurring.

APPENDIX B

99038

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

November 24, 2004

Mr. Marc W. Martin
Marc W. Martin Ltd.
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604

No. 99038 – People State of Illinois, respondent, v. Irene Romaniuk, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 16, 2004.